

PR#9833

ABERNATHY, ED

3/26/2009

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THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel W.A.  
DREW EDMONDSON, in his capacity  
as ATTORNEY GENERAL OF THE STATE  
OF OKLAHOMA, and OKLAHOMA SECRETARY  
OF THE ENVIRONMENT C. MILES TOLBERT,  
in his capacity as the TRUSTEE FOR  
NATURAL RESOURCES FOR THE STATE OF  
OKLAHOMA,

Plaintiffs,

vs

No. 05-CV-0329 GKF-SAJ

TYSON FOODS, INC., TYSON POULTRY, INC.,  
TYSON CHICKEN, INC., COBB-VANTRESS, INC.,  
AVIAGEN, INC., CAL-MAINE FOODS, INC.,  
CAL-MAINE FARMS, INC., CARGILL, INC.,  
CARGILL TURKEY PRODUCTION, LLC,  
GEORGE'S, INC., GEORGE'S FARMS, INC.,  
PETERSON FARMS, INC., SIMMONS FOODS, INC.,  
and WILLOW BROOK FOODS, INC.,

Defendants.

DEPOSITION OF ED ABERNATHY  
Taken on Behalf of the Defendants  
On March 26, 2009, beginning at 9:30 a.m.  
In Poteau, Oklahoma

APPEARANCES

Appearing on behalf of the PLAINTIFFS:

Sharon K. Weaver, Attorney at Law  
RIGGS, ABNEY, NEAL, TURPEN, ORBISON & LEWIS, P.C.  
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Appearances continued on the next page

REPORTED BY: MARY K. BECKHAM, CSR, RPR

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1 APPEARANCES continued

2 Appearing on behalf of the WITNESS:

3  
4 Elizabeth Tennery, Assistant General Counsel  
5 STATE OF OKLAHOMA  
6 P.O. Box 528804  
7 Oklahoma City, Oklahoma 73152  
8 405-522-6104  
9 elizabeth.tennery@oda.state.ok.us

10 Appearing on behalf of the DEFENDANT PETERSON FARMS:

11 Philip D. Hixon, Attorney at Law  
12 McDANIEL, HIXON, LONGWELL & ACORD  
13 320 South Boston, Suite 700  
14 Tulsa, Oklahoma 74103  
15 918-382-9200  
16 phixon@mhla-law.com

17 Appearing on behalf of the DEFENDANT CARGILL, INC.  
18 and CARGILL TURKEY PRODUCTION, LLC:

19 Colin H. Tucker, Attorney at Law  
20 RHODES, HIERONYMUS, JONES, TUCKER & GABLE  
21 100 W. 5th Street, Suite 400  
22 Tulsa, Oklahoma 74103-4287  
23 918-582-1173  
24 chtucker@rhodesokla.com

25 Appearing on behalf of the DEFENDANT GEORGE'S, INC.  
and GEORGE'S FARMS, INC.:

K.C. Dupps Tucker, Attorney at Law  
BASSETT LAW FIRM, LLP  
221 North College Avenue  
P.O. Box 3618  
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1 MR. HIXON: I will go ahead and enter  
2 appearances on the record. I'm Phillip Hixon. I'm  
3 here on behalf of Peterson Farms.

4 MR. TUCKER: Colin Tucker. I'm here for  
5 Cargill and Cargill Turkey Production.

6 MS. TUCKER: I'm K.C. Tucker and I'm here  
7 for the George's defendant.

8 MS. WEAVER: Sharon Weaver. I'm here for  
9 the State of Oklahoma.

10 MS. TENNERY: Elizabeth Tennery. I'm here  
11 on behalf of Ed Abernathy.

12 ED ABERNATHY,  
13 after having been first duly sworn, deposes and  
14 says in reply to the questions propounded as  
15 follows, to-wit:

16 DIRECT EXAMINATION

17 BY MR. HIXON:

18 Q Mr. Abernathy, will you please state your  
19 name for the record?

20 A Edward J. Abernathy.

21 Q And have you been deposed before?

22 A No.

23 Q Just some ground rules. I'm going to be  
24 asking you some questions and if you can give me a  
25 verbal response, if it's a yes or no question,

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1           **A**     I retired from Soil Conservation Service.

2           **Q**     Okay.

3           **A**     I've done other things since then.

4           **Q**     Did you have gainful employment after  
5 1985?

6           **A**     Not as a full-time employee. I've done  
7 contract work.

8           **Q**     Okay. What kind of contract work?

9           **A**     Well, I bid some flood control dams. I --

10          **Q**     Who did you do that work for?

11          **A**     Soil Conservation Service.

12          **Q**     Okay. What other contract work do you do?

13          **A**     Presently I'm employed by the State  
14 Department of Agriculture.

15          **Q**     And how long have you been employed by  
16 ODAFF?

17                 MS. WEAVER: Object to the form.

18          **Q**     She object -- she didn't -- they'll make  
19 periodic objections. She didn't like the way I  
20 asked my question. You can go ahead and answer the  
21 question.

22          **A**     Would you restate it?

23          **Q**     How long have you been employed by the  
24 Department of Agriculture?

25                 MS. WEAVER: Same objection.

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1           **Q**     Is there anything that you do at the farms  
2     other than speak with the landowner?

3           **A**     No.

4           **Q**     Do you know who David Wheelock is?

5           **A**     I'm not very good at remembering names.

6           **Q**     How about Keith Smith?

7           **A**     Keith Smith. The name is familiar.

8           **Q**     Do you know Paula Albers?

9           **A**     I don't say -- I can't say that I do.

10                   (Exhibit 1 marked for identification.)

11           **Q**     (BY MR. HIXON) I'm going to hand you what  
12     we will mark as Exhibit 1 to your deposition. This  
13     is a copy of the Oklahoma Registered Poultry Feeding  
14     Operations Act. This version of the statutes came  
15     off of the ODAFF's website. I just have a couple of  
16     questions on this, but before we get to that: I  
17     read something that indicated that you were on the  
18     rules advisory committee for the Registered Poultry  
19     Feeding Operations Act; is that correct?

20           **A**     That has been 15 years ago probably.

21           **Q**     Okay. But you were on that committee?

22           **A**     For a short time.

23           **Q**     How long were you on that committee?

24           **A**     I don't remember exactly, a year or two.

25           **Q**     What did you do as a member of that

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1 land at appropriate times and rates. Discharge or  
2 runoff of waste from the application site is  
3 prohibited." Do the plans that you write contain  
4 controls that would prevent the discharge or runoff  
5 from the application site?

6 MS. WEAVER: Object to the form.

7 A Would you restate that question, please?

8 Q The plans that you write have to meet  
9 these requirements; do you understand that?

10 A Uh-huh.

11 Q Okay. And one of these requirements is  
12 that there is no discharge or runoff of poultry  
13 litter that's applied on a field. And what I'm --  
14 what I'm wanting to know is how -- do the plans that  
15 you write contain controls that would prevent that  
16 discharge or runoff from poultry -- of poultry  
17 litter from the field where it's applied?

18 MS. WEAVER: Same objection.

19 A That is covered under waste utilization  
20 guidelines and best management practices. And a  
21 statement that I put in about litter storage.

22 Q Okay. When you're saying it's covered  
23 under waste utilization practices or best management  
24 practices, are those -- those are parts of the plan?

25 A Yes.